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COLONIZE MEDIA, INC. and
JOSE DAVID HERNANDEZ

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

YELLOWCAKE, INC., a)	Case No.: 1:20-CV-00988-AWI-BAM
California corporation,)	
)	
Plaintiff,)	PLAINTIFF/COUNTERDEFENDANTS'
)	ANSWER TO FIRST AMENDED
)	COUNTERCLAIMS
v.)	
)	
HYPHY MUSIC, INC.,)	Magistrate Judge: Barbara A. McAuliffe
)	
Defendant.)	

HYPHY MUSIC, INC.,)
)
Counterclaimant,)
)
v.)
)
YELLOWCAKE, INC.,)
COLONIZE MEDIA, INC., JOSE)
DAVID HERNANDEZ, AND)
JESUS CHAVEZ, SR.,)
)
)
Counterdefendants.)

Plaintiff/Counterdefendants Yellowcake, Inc., Colonize Media, Inc., and Jose David Hernandez (“Plaintiff/Counterdefendants”) by and through their attorneys Hefner, Stark & Marois, LLP and Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP, respond to Defendant/Counterclaimant HYPHY MUSIC, INC.’s (“Hyphy”) First Amended Counterclaim (“First Amended Counterclaim” or “Counterclaim”) as follows:

NATURE OF THE ACTION

1. Paragraph 1 of the First Amended Counterclaim does not contain any allegations or statements of fact to which a response is required. To the extent any such response is required, Plaintiff/Counterdefendants deny the remaining allegations in Paragraph 1 of the Counterclaim.

THE PARTIES

2. Plaintiff/Counterdefendants lack knowledge or information to form a belief as to the allegations contained in Paragraph 2 of the First Amended Counterclaim.

3. Plaintiff/Counterdefendants admit to the truth of the allegations in Paragraph 3 of the First Amended Counterclaim.

4. Plaintiff/Counterdefendants admit to the truth of the allegations in Paragraph 4 of the First Amended Counterclaim.

5. Plaintiff/Counterdefendants admit to the truth of the allegations in Paragraph 5 of the First Amended Counterclaim.

6. Plaintiff/Counterdefendants lack knowledge or information to form a belief as to the allegations contained in Paragraph 6 of the First Amended Counterclaim.

7. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 7 of the First Amended Counterclaim.

JURISDICTION

9. Plaintiff/Counterdefendants admit the First Amended Counterclaim asserts claims for copyright infringement. Plaintiff/Counterdefendants state that the claims asserted in the First Amended Counterclaim speak for themselves and deny that the claims have any merit. Plaintiff/Counterdefendants deny the remaining allegations in Paragraph 9 of the First Amended Counterclaims.

10. The allegations in Paragraph 10 of the First Amended Counterclaim assert legal conclusions to which no response is required. Plaintiff/Counterdefendants deny the remaining allegations in Paragraph 10 of the First Amended Counterclaim.

11. The allegations in Paragraph 11 of the First Amended Counterclaim assert legal conclusions to which no response is required. Plaintiff/Counterdefendants deny the remaining allegations in Paragraph 11 of the First Amended Counterclaim.

12. The allegations in Paragraph 12 of the First Amended Counterclaim assert legal conclusions to which no response is required. Plaintiff/Counterdefendants deny the remaining allegations in Paragraph 12 of the First Amended Counterclaim.

GENERAL ALLEGATIONS

13. Paragraph 13 of the First Amended Counterclaim does not contain any allegations or statements of fact to which a response is required.

14. Plaintiff/Counterdefendants lack knowledge or information to form a belief as to the allegations contained in Paragraph 14 of the First Amended Counterclaim.

15. Plaintiff/Counterdefendants admit the allegations contained in Paragraph 15 of the First Amended Counterclaim.

1 16. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 16 of
2 the First Amended Counterclaim.

3 17. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 17 of
4 the First Amended Counterclaim.

5 18. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 18 of
6 the First Amended Counterclaim.

7 19. Plaintiff/Counterdefendants deny the allegations contained in Paragraph 19
8 of the First Amended Counterclaim.

9 20. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 20 of
10 the First Amended Counterclaim.

11 21. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 21 of
12 the First Amended Counterclaim.

13 22. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 22 of
14 the First Amended Counterclaim.

15 23. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 23 of
16 the First Amended Counterclaim.

17 24. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 24 of
18 the First Amended Counterclaim.

19 25. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 25 of
20 the First Amended Counterclaim.

21 26. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 26 of
22 the First Amended Counterclaim.

23 27. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 27 of
24 the First Amended Counterclaim.

25 28. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 28 of
26 the First Amended Counterclaim.

27 29. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 29 of
28 the First Amended Counterclaim.

30. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 30 of the First Amended Counterclaim.

AS AND FOR A RESPONSE TO THE FIRST CLAIM FOR RELIEF

**Direct Infringement of Plaintiffs' Rights under 17 U.S.C. § 101 et seq. as to
the Los Originales Albums
(Against Counter-defendants Yellowcake and Colonize)**

Pursuant to an Order of the Court dated July 20, 2021 (Dkt. No. 42), this cause of action has been dismissed. Notwithstanding this dismissal, to the extent an answer is required, Plaintiff/Counterdefendants answer as follows:

31. Plaintiff/Counterdefendants repeat, re-allege and incorporate by reference in this paragraph the preceding responses to Paragraphs 1 through 30 of the First Amended Counterclaim and incorporate them by reference as though set forth fully herein.

32. Plaintiff/Counterdefendants admit the First Claim for Relief asserts claims under 17 U.S.C. § 501. Plaintiff/Counterdefendants state that the claims asserted in the First Claim for Relief speak for themselves and deny that the claims have any merit.

33. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 33 of the First Amended Counterclaim.

34. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 34 of the First Amended Counterclaim.

35. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 35 of the First Amended Counterclaim.

36. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 36 of the First Amended Counterclaim.

37. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 37 of the First Amended Counterclaim.

38. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 38 of the First Amended Counterclaim.

39. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 39 of

1 the First Amended Counterclaim.

2 40. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 40 of
3 the First Amended Counterclaim.

4 41. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 41 of
5 the First Amended Counterclaim.

6 **AS AND FOR A RESPONSE TO THE SECOND CLAIM FOR RELIEF**
7 **Direct Infringement of Plaintiffs' Rights Under 17 U.S.C. § 101 et seq. as to**
8 **the Los Originales Cover Art**
9 **(Against Counter-defendants Yellowcake and Colonize)**

10 Pursuant to an Order of the Court dated July 20, 2021 (Dkt. No. 42), this cause
11 of action has been dismissed. Notwithstanding this dismissal, to the extent an answer is
12 required, Plaintiff/Counterdefendants answer as follows:

13 42. Plaintiff/Counterdefendants repeat, re-allege and incorporate by reference in
14 this paragraph the preceding responses to Paragraphs 1 through 41 of the First Amended
15 Counterclaim and incorporate them by reference as though set forth fully herein.

16 43. Plaintiff/Counterdefendants admit the Second Claim for Relief asserts claims
17 under 17 U.S.C. § 501. Plaintiff/Counterdefendants state that the claims asserted in the
18 Second Claim for Relief speak for themselves and deny that the claims have any merit.

19 44. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 44 of
20 the First Amended Counterclaims.

21 45. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 45 of
22 the First Amended Counterclaims.

23 46. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 46 of
24 the First Amended Counterclaims.

25 47. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 47 of
26 the First Amended Counterclaims.

27 48. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 48 of
28 the First Amended Counterclaims.

1 49. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 49 of
2 the First Amended Counterclaims.

3 50. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 50 of
4 the First Amended Counterclaims.

5 51. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 51 of
6 the First Amended Counterclaims.

7 52. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 52 of
8 the First Amended Counterclaims.

9 **AS AND FOR A RESPONSE TO THE THIRD CLAIM FOR RELIEF**

10 **Temporary, Permanent, and Injunctive Relief**
11 **(Against Counter-defendants Yellowcake and Colonize)**

12 Pursuant to an Order of the Court dated July 20, 2021 (Dkt. No. 42), this cause
13 of action has been dismissed. Notwithstanding this dismissal, to the extent an answer is
14 required, Plaintiff/Counterdefendants answer as follows:

15 53. Plaintiff/Counterdefendants repeat, re-allege and incorporate by reference in
16 this paragraph the preceding responses to Paragraphs 1 through 52 of the First Amended
17 Counterclaim and incorporate them by reference as though set forth fully herein.

18 54. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 54 of
19 the First Amended Counterclaims.

20 **AS AND FOR A RESPONSE TO THE FOURTH CLAIM FOR RELIEF**

21 **Intentional Interference with Prospective Business Advantage**
22 **(Against Counter-defendants Yellowcake and Colonize)**

23 55. Plaintiff/Counterdefendants repeat, re-allege and incorporate by reference in
24 this paragraph the preceding responses to Paragraphs 1 through 54 of the First Amended
25 Counterclaim and incorporate them by reference as though set forth fully herein.

26 56. Plaintiff/Counterdefendants lack knowledge or information to form a belief
27 as to the allegations contained in Paragraph 56 of the First Amended Counterclaim as to
28 any relationship between Hyphy and YouTube. Plaintiff/Counterdefendants deny the

1 remaining allegations set forth in paragraph 56 of the First Amended Counterclaim.

2 57. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 57 of
3 the First Amended Counterclaims.

4 58. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 58 of
5 the First Amended Counterclaims.

6 59. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 59 of
7 the First Amended Counterclaims.

8 **AS AND FOR A RESPONSE TO THE FIFTH CLAIM FOR RELIEF**

9 **Intentional Interference with Contractual Relations**
10 **(against Counter-defendants Hernandez, Yellowcake and Colonize)**

11 Pursuant to an Order of the Court dated July 20, 2021 (Dkt. No. 42), this cause
12 of action has been dismissed. Notwithstanding this dismissal, to the extent an answer is
13 required, Plaintiff/Counterdefendants answer as follows:

14 60. Plaintiff/Counterdefendants repeat, re-allege and incorporate by reference in
15 this paragraph the preceding responses to Paragraphs 1 through 59 of the First Amended
16 Counterclaim and incorporate them by reference as though set forth fully herein.

17 61. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 61 of
18 the First Amended Counterclaims except admit that Hernandez is a principal of
19 Colonize.

20 62. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 62 of
21 the First Amended Counterclaims.

22 63. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 63 of
23 the First Amended Counterclaims.

24 64. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 64 of
25 the First Amended Counterclaims.

26 65. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 65 of
27 the First Amended Counterclaims.

28 66. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 66 of

the First Amended Counterclaims.

AS AND FOR A RESPONSE TO THE SIXTH CAUSE OF ACTION

**Unfair Competition Under California Business and Professions Code § 17200
(Against all Counter-defendants Yellowcake, Colonize, and Hernandez)**

Pursuant to an Order of the Court dated July 20, 2021 (Dkt. No. 42), this cause of action has been dismissed. Notwithstanding this dismissal, to the extent an answer is required, Plaintiff/Counterdefendants answer as follows:

67. Plaintiff/Counterdefendants repeat, re-allege and incorporate by reference in this paragraph the preceding responses to Paragraphs 1 through 66 of the First Amended Counterclaim and incorporate them by reference as though set forth fully herein.

68. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 68 of the First Amended Counterclaims.

69. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 69 of the First Amended Counterclaims.

70. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 70 of the First Amended Counterclaims.

71. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 71 of the First Amended Counterclaims.

AS AND FOR A RESPONSE TO THE SEVENTH CAUSE OF ACTION

**Conversion
(Against Counter-defendant Yellowcake)**

Pursuant to an Order of the Court dated July 20, 2021 (Dkt. No. 42), this cause of action has been dismissed. Notwithstanding this dismissal, to the extent an answer is required, Plaintiff/Counterdefendants answer as follows:

72. Plaintiff/Counterdefendants repeat, re-allege and incorporate by reference in this paragraph the preceding responses to Paragraphs 1 through 71 of the First Amended Counterclaim and incorporate them by reference as though set forth fully herein.

73. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 73 of

1 the First Amended Counterclaims.

2 74. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 74 of
3 the First Amended Counterclaims.

4 75. Plaintiff/Counterdefendants deny the allegations set forth in paragraph 75 of
5 the First Amended Counterclaims.

6 **AS AND FOR A RESPONSE TO THE EIGHTH CAUSE OF ACTION**

7 **Breach of Oral Contract**

8 **(Against Counter-defendant Jesus Chavez Sr.)**

9 76. Plaintiff/Counterdefendants repeat, re-allege and incorporate by reference in
10 this paragraph the preceding responses to Paragraphs 1 through 75 of the First Amended
11 Counterclaim and incorporate them by reference as though set forth fully herein.

12 77. Plaintiff/Counterdefendants deny the allegations contained in Paragraph 77
13 of the First Amended Counterclaim.

14 78. Plaintiff/Counterdefendants deny the allegations contained in Paragraph 78
15 of the First Amended Counterclaim.

16 79. Plaintiff/Counterdefendants deny the allegations contained in Paragraph 79
17 of the First Amended Counterclaim.

18 80. Plaintiff/Counterdefendants deny the allegations contained in Paragraph 79
19 of the First Amended Counterclaim.

20 **AFFIRMATIVE DEFENSES**

21 **AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

22 81. The First Amended Counterclaim fails to state a counterclaim upon which
23 relief may be granted.

24 **AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

25 82. The counterclaims in the First Amended Counterclaim are barred in whole
26 or in part by the applicable statute of limitations in 17 U.S.C. § 507(b).

27 **AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

28 83. The counterclaims in the First Amended Counterclaim are barred in whole

1 or in part by implied license or contract.

2 **AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

3 84. The counterclaims in the First Amended Counterclaim are barred in whole
4 or in part by the doctrine of “fair use.”

5 **AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

6 85. The counterclaims in the First Amended Counterclaim are barred in whole
7 or in part by the doctrines of equitable estoppel, consent, and/or waiver.

8 **AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

9 86. The counterclaims in the First Amended Counterclaim are barred in whole
10 or in part by the doctrine of copyright misuse.

11 **AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

12 87. The common law counterclaims in the First Amended Counterclaim are
13 preempted by federal law.

14 **AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

15 88. The counterclaims in the First Amended Counterclaim are barred by the
16 doctrine of unclean hands.

17 **AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

18 89. The counterclaims in the First Amended Counterclaim re barred by the
19 Statute of Frauds.

20 **AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

21 90. The counterclaims in the First Amended Counterclaim are barred by
22 documentary evidence.

23 **AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

24 91. Counterclaimant failed to follow the notice procedures required by 17 U.S.C.
25 § 512 *et seq.*

26 **AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

27 92. Counterclaimant lacks standing to bring this action.

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AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

93. Plaintiff/Counterdefendants' investigation into the claims asserted in the First Amended Complaint are ongoing. Plaintiff/Counterdefendants reserve all defenses available under the Federal Rules of Civil Procedure and the Copyright Act and all other applicable law and at equity that may now exist or in the future become available based upon discovery.

WHEREFORE, Plaintiff/Counterdefendants respectfully request that this Court:

1) Enter judgment against Counterclaimant and in favor of Plaintiff/Counterdefendants on all counterclaims asserted in the First Amended Counterclaim;

2) Dismiss the First Amended Counterclaim with prejudice;

3) Award Plaintiff/Counterdefendants their reasonable attorneys' fees and costs in accordance with 17 U.S.C. § 505 and any other applicable law; and

4) Award Plaintiff/Counterdefendants such further relief as the Court may deem just and proper.

Dated: August 17, 2021

**ABRAMS, FENSTERMAN,
FENSTERMAN, EISMAN, FORMATO,
FERRARA, WOLF & CARONE, LLP**

By: 

Seth L. Berman, Esq.
(admitted pro hac vice)

And

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Thomas P. Griffin, Jr., Esq. (SBN 155133)

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David Hernandez*